

Access to Western Australia's justice system by persons with a disability

A preliminary submission to the Law Reform Commission of Western Australia

19/06/26

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1. Preliminaries

About the Respondents

Consumers of Mental Health WA (CoMHWa) is Western Australia's peak body for and by mental health consumers (people with a past or present lived experience of mental health issues, psychological or emotional distress, neurodivergence and psychosocial disability). We are a not-for-profit, systemic advocacy group independent from mental health services that exists to listen to, understand and act upon the voices of consumers. We work collaboratively with other user-led organisations and a diversity of stakeholders to advance our rights, equality, recovery and wellbeing.

Request for Feedback

CoMHWa works to uphold the dignity and human rights of consumers, through providing advocacy in leading change with and for consumers. We appreciate notification of the outcomes of our submission to this consultation in order to understand and communicate the difference made through our work.

Please provide feedback via the contact details at the end of the submission.

Language

CoMHWa uses the term mental health consumer throughout this submission. Mental health consumers to refer to people who identify as having a past or present lived experience of psychological or emotional distress, irrespective of whether they have received a diagnosis of mental illness or accessed services. Other ways people may choose to describe themselves include "peer", "survivor", "person with a lived experience" and "expert by experience".

This definition is based on consumers' call for respect, dignity and choice in how we choose to individually identify. As individuals we choose different ways to name and describe our experiences that may confirm or trouble ideas about 'mental illness'.

About the Consultation: 'Access to Western Australia's justice system by persons with a disability'

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Project 115

The Law Reform Commission of Western Australia is to review and report on legislative reforms to improve access to Western Australia's courts and tribunal system for persons with disability in Western Australia.

In carrying out its review, the Commission should:

a. utilise a broad definition of "disability", encompassing long-term physical, psychiatric, intellectual, sensory, neurological, and/or learning impairments that, in interaction with barriers, hinder full participation in the community;

b. specifically consider the experiences of persons with disability within the Western Australian court and tribunal system as:

- accused persons;
- convicted persons;
- victims or family of victims of crime;
- witnesses;
- jurors;
- applicants in civil matters;
- defendants in civil matters; and
- other persons appearing in civil matters, including before tribunals.

c. consider the need for reform, and the best approach to implementing that reform in the Western Australian context, following on from or in the context of the:

1. Australian Human Rights Commission Report - Equal Before the Law: Towards Disability Justice Strategies (2014);
2. Australian Law Reform Commission Report 124 - Equality, Capacity and Disability in Commonwealth Laws (2014);
3. Law Council of Australia - The Justice Project Final Report (2018);
4. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, particularly Final Report: Volume 8 - Criminal Justice and People with Disability (2023);
5. the Western Australian [State Disability Strategy 2020-2030](#);
6. The Western Australian Department of Justice's [Disability Access and Inclusion Plan 2024-2029](#); and
7. Western Australian Law Reform Commission Report on [Project 114 - Guardianship and Administration \(2024\)](#).

d. consider the need to legislate supports for persons with disability across the statute book, including the provision of communication partners, interpreters, technology, and other necessary supports to enable effective participation in court and tribunal processes;

e. have regard to the United Nations Convention on the Rights of Persons with Disabilities, to which Australia is a party and which sets out:

- rights for people with disability to recognition before the law, to legal capacity and to access to justice on an equal basis with others; and
- a general principle of respect for inherent dignity, individual autonomy, including freedom to make one's own choices, and independence of persons.

f. consider relevant state and federal reforms, policies and frameworks that impact the participation of persons with disability in the Western Australian court and tribunal system;

g. have regard to the *Criminal Law (Mental Impairment) Act 2023*, which commenced operation on 1 September 2024, but not undertake specific review of this legislation as it will be subject to a statutory review five years post-commencement; and

h. have regard to any other matter the Commission considers relevant

2. Introduction

Consumers of Mental Health WA welcomes to opportunity to provide the Law Reform Commission of WA with a preliminary submission on their review examining access to Western Australia's justice system by persons with a disability. CoMHWA represents people with a lived experience of mental health challenges, including many people who identify as having a psychosocial disability, and our preliminary submission is founded on their experiences of accessing the justice system. We have also drawn on the expertise and experience of CoMHWA's individual advocates, as well as a range of reports and related government strategies to inform our preliminary submission and develop recommendations for reform. We have included a number of quotes from participants that completed an online survey and attended our focus group on this topic, and structured our recommendations around the issues revealed from their stories.

We heard from our members about the profound difficulties of navigating the justice system as a person with psychosocial disability, as well as of the profound degree of stigmatising behaviour they were subjected to when engaged with the justice system. While we focused on the accessibility of courts and tribunals in our questions, the responses to our consultation with members also highlighted the intersecting issues relating to the actions of the police force and realities of the prison system. Alongside the prevalence of stigma in the justice system, we also heard strong views about the importance of providing advocacy to help navigate the complicated and stressful processes of courts and tribunals, as well as the pressing need for education about mental health challenges for those who work in the justice system. There was a firm view from our members that the justice system is under-resourced, which they felt was a key factor in their negative experiences of courts not being able to take the time to understand, and appropriately respond to, the complex circumstances and intersectionality of challenges frequently experienced in the lives of people living with a psychosocial disability.

Our recommendations are provided at the end of each section, and are founded on the experiences of our members with the justice system and their identified needs in relation to full participation in these processes. It is CoMHWA's view that the justice system would broadly benefit from increased awareness and understanding of mental health challenges and psychosocial disability for those working in this system. This would not only relate to the potential impact that mental health challenges can have on participation in justice processes, but also prevent against indulging reductionistic stigma about consumers through highlighting the episodic nature and symptomatic variability of psychiatric diagnoses given to people with psychosocial disability.

3. Discussion and Recommendations

3.1 The Prevalence and Impact of Stigma in the Justice System and the need for increased Education

A key concern from CoMHWAs members is around the stigmatising attitude and actions they face when engaging in all parts of the WA justice system, and the urgent need for education to equip those working in this space with knowledge about mental health distress and psychosocial disability. Despite continuing efforts to improve education about the nature and variability of mental health challenges in Australia, there is a continuing stigma that people who experience these challenges face in all aspects of their day to day lives.¹ Those people with psychosocial disability who encounter the justice system face forms of stigma that have the potential to foundationally impact their lives for the worse when decisions are made about them in these settings. It is accordingly imperative that further actions are taken to address the prevalence of stigma around mental health challenges in the justice system, where outcomes founded on uninformed or discriminatory attitudes can have existential consequences for many consumers.

Stigma

One kind of stigmatising view that we have heard about from our members relates to the tendency for both police and court staff such as judges to view the person solely in light of their stated mental health diagnosis. This can lead to mistaken assumptions about their actions and reasoning, as well as obscuring the particular context and circumstances of their lives that have led them to an encounter with the justice system. In some cases, we heard that the very presence of a mental health challenge was taken as evidence of guilt:

“The assumption seemed to be for me, that because I have a mental health condition that I am guilty of all charges I was accused of.”

Outside of these experiences of assumed guilt due to mental health challenges, other respondents told us of experiences where their mental health challenges were used to support prosecution despite being, in their view, completely unrelated to the matter being considered by the court. As one member summarised to us:

¹ Morgan A, Ross A, McNaught G, Green R, Reavley NJ. (2026) ‘Public stigma of mental illness in Australia: shifts in attitudes across nationally representative surveys in 2011 and 2024.’ *Epidemiol. Psychiatr. Sci.* Apr 15;35:e26. doi: 10.1017/S2045796026100602. <https://pmc.ncbi.nlm.nih.gov/articles/PMC13122537/>

“My mental health challenges were being used as “evidence” of a crime I had never committed.”

The assumption of guilt based on the existence of mental health challenges was most acute in the stories we heard about the actions of police in bringing and pursuing charges. The following quote captures the dramatic effect that this kind of stigma can have, and offers an example of the weaponisation of mental health challenges that can be faced by people with psychosocial disability:

“[the police] found out that I have mental health challenges, particularly one specific diagnosis, they said that I should not be released into the community... They claimed that people with my diagnosis are routinely homicidal, and I was coloured with that even though I have never had any history of violence in my offending or otherwise.”

The nature of mental health challenges and psychological disability is a developing field of human enquiry, with iterative revisions and changing models of knowledge. While it is outside the scope of this submission to provide the LRCWA with a thorough critical lens around reductionism that can emerge from psychiatric classifications, it is important to underscore how stigmatising assumptions around consumers often hinge on treating psychiatric diagnoses as fully explicable features of human life. While well-practised psychiatry may avoid this kind of reductionism,² without thorough education or appropriate time for well-intentioned expert consultation, those working in the justice system will rely on summarised descriptions or summarised case notes and briefings that risk categorising consumers through crude and misleading models.

It is CoMHWA’s view that those working in the justice system should exercise considered caution when using mental health challenges and case notes to inform their decisions. Our individual advocates have highlighted to us that case notes consumers may have on record are often vague, simplistic, and open to crude misinterpretation. This issue is complicated further by the tendency for some medical professional to present stark conclusions in these reports for the best intentions—Namely, to support consumers in accessing further support programs or assistance. While this might support a consumer to access support such as a Disability Support Pension, or qualify for a practically useful service, taken out of context these records can paint a misleading picture of a consumers life and mischaracterise them.

3.1.1 Recommendation: The justice system should make efforts to recognise the variability and epistemic limitations of mental health diagnoses when these are utilised in court proceedings and decisions.

3.1.2 Recommendation: The justice system should recognise the nuanced and episodic nature of psychosocial disabilities when they are used to characterise people engaged in court and tribunal processes.

Education

When we asked our members about how the justice system could better address the issues of stigma outlined above, we consistently heard about the need for those working at all levels of the justice system to receive improved education about mental health challenges and psychosocial disability. As one member put it:

“I think that the courts really need better education about how mental health conditions can occur, and to prevent discrimination and the stigma that is held in the community.”

Our members expressed that the potential impact of improved education about mental health challenges would be to prevent those working in the courts from making assumptions around how someone with these challenges should, or ought to, act or appear. One participant in our focus group spoke of a judge maintaining a sense of incredulity about their offense and how this intersected with their mental health challenges, telling us:

“Judges need to be educated about mental health issues and how they can manifest. I was told that I was smart, look fine, and [the judge] asked me ‘why did you do this, you look fine, your partner look fine...’ They just don’t understand that mental health can appear in a lot of ways that aren’t obvious.”

The implicit idea members felt was communicated by this judge was that someone with mental health challenges should look or act a certain way, demonstrating a deep unfamiliarity with the ways that mental health challenges and psychosocial disability may be experienced by different people, especially in relation to a potential motivation or explanation for why a person acted in a particular way. Our participants also noted that judges were far more aware of the impact that alcohol and other drugs might have on decision making and why they are in court, as represented in the following quote from our focus group:

“The judge said ‘well, there is no drug problem so why would you do this’ They don’t seem to recognise that I was severely mentally ill when this happened.”

To ensure that people working within the justice system have a better understanding of the mental health challenges and psychosocial disability that may be held by those engaging in court and tribunals, our members suggested that education should be undertaken as part of the time allotted for professional development in the justice system.

“The lack of training and professional development means that judges can’t really understand how you may have needed up in this situation.”

The members we consulted with felt that providing education as a part of professional development would help court staff to understand common misconceptions, such as ignorance of the episodic nature of psychosocial disability, potential side effects people experience on different medications, and the variability of how a diagnosed condition may be experienced and impact a consumer. Importantly, by featuring this education in professional development, they felt the justice system would be able to ensure that they are aware of the sometimes-rapid development of knowledge in this space:

“Things [in mental health] are changing now every few years – Some psychiatrists are not aware of new developments, let alone people working in the courts and tribunals. It needs to be continuous education, professional development should include mental health education for judges and justices. like medications and how they can impact people with side effects.”

Without this education, our members felt that already stressful encounters in courtroom settings can become even more difficult, with consumers taking on the burden of psychiatric education to ensure that the relevant authorities understand how their mental health challenges can impact their lives and behaviour. This frustration was expressed by a focus group participant as follows:

“The judge had never even heard of my diagnosis before, and I had to try to explain it in court – It is not unique!”

It is worth noting that the need for improved education about mental health challenges is a key objective of Outcome 1 in the Department of Justice’s *Disability Access and inclusion Plan 2024-2029* (Hereafter referred to as the DAIP), which identifies the need to:

‘Explore targeted training programs for frontline and key staff, in areas such as supporting people with complex communication needs, unconscious bias, neurodiversity, and the intersection of disability and mental health.’³

³ Government of Western Australia Department of Justice (2024) Disability Access and Inclusion Plan 2024-2029 <https://www.wa.gov.au/system/files/2024-06/doj-daip-2024-2029.pdf>

We hope that our preliminary submission and the work of the LRCWA can work to support this recommendation going forwards, especially in light of our case study (detailed in section 3.6) that notes the lack of familiarity of some courts with the DAIP.

3.1.3 Recommendation: Support the Inclusion of contemporary education about psychosocial disability/mental health challenges in the professional development given to people working in the justice system.

3.2 Complexity, costs and the impact of inadequate pathways for matters involving people with psychosocial disability

Complexity and Intersectionality of Personal Circumstances

Our members spoke extensively about how they struggled to communicate their life circumstances in a comprehensive and satisfactory manner when in court settings, especially in light of the limited time provided by staff as well as judges/justices in these processes. People living with psychosocial disability often face at a range of other intersecting issues, including family and domestic violence, poverty, and struggles with alcohol and other drug misuse. It was felt by our focus group participants that the complex circumstances that they live amidst were often not able to be recognised with the processes of courts and tribunals, though we note that responses we received indicated that tribunals such as the State Administrative Tribunal were far more accommodating of intersectional challenges if they were informed about these factors (usually by advocates).

Overall, however, our members felt that the justice system was incapable of appropriately recognising and responding to their circumstances and needs. The following response capture this in relation to the interplay of mental health challenges and navigating abuse from domestic violence:

“A lot of women are managing with intersections of domestic violence...having to navigate these systems while also fearing abuse. In relation to mental illness, you often have to cover it up, if you have children and you have to keep it together ...There needs to be more awareness of the possible intersection of mental health issues and FDV... They could check in, make sure that they are understanding the whole situation.”

The intersection of poverty and psychosocial disability was also noted by our members as having a large impact on engaging with the justice system. We heard about how, for consumers experiencing poverty, the

penalty of court fines can lead to a downward spiral where they are unable to financially recover. Without financial stability, they then end up falling back into contact with the justice system and the cycle repeats:

“I’ve been present in the magistrate and district courts with a person who does not have any other supports... It is just into court, out of court, and then fines just pile up, it’s a damn circle. He has mental health challenges, but no one will give him a chance.”

3.2.1 Recommendation: Work towards improving the capacity for the justice system to engage with and understand how complex intersections of challenges faced by people with psychosocial disability

Costs of Pursuing Justice

In our consultations we also heard from members who have been charged with offences, about how they would have engaged differently if they had had the financial capacity to engage more thorough legal representation. This was captured by one focus group member as follows:

“I could have disputed a lot of charges if I was able to afford a lawyer myself.”

For others, the lack of resources alongside complicating factors precluding access to community mental health services meant that they risked incarceration due to a lack of finances, placing them in what they felt was an impossible position:

“To avoid prison, I have to undertake treatment that I can’t afford. Noone knows what to do with my case.”

The members we consulted with were of the view that, by and large, they were often at the mercy of the justice system when defending charges when in poverty. The choices they were faced with in pursuing justice were severely limited by their finances, and their experiences of stigma from initial engagement with police and court staff compounded their sense of pessimism and powerlessness in relation to taking further steps to improve their possible court outcomes, or dispute matters where they believed they were being misrepresented or unjustly accused.

3.2.2 Recommendation: Work towards ensuring that people with disabilities are not prevented from pursuing justice due to financial barriers.

3.2.3 Recommendation: Ensure that court directed requirements for treatment or support do not sit outside of the financial capacity for the person concerned.

Inadequacy of Established Pathways

In our consultation with members, we also heard about the limitations present in the WA justice system relating specifically to Start Court, the pathway provided to help people with mental health challenges work with the court while also being linked with the appropriate mental health supports. While the participants in the focus group felt that Start Court is an important and positive mechanism within the WA justice system, one member spoke of how their particular circumstances precluded them from being able to engage with this mechanism:

“I am not eligible for START court, I have a lot of charges, but I was making mixed pleas of not guilty and guilty... If I plead guilty to all of the charges I would have been in prison for 10 years.”

This member spoke extensively about how Start Court’s requirement that a person ‘accept that he or she committed the offence(s) that led to the court appearance’⁴ blocked their access to a space that could have understood the profound intersection of their offending with the context of their mental health challenges. This member noted that they accepted the majority of their offenses occurred, and took full ownership and accountability for their actions in this regard. However, they were also facing charges for offenses they did not commit, that would likely have led to an extensive prison sentence were they to plead guilty to them. The member felt that, because of this requirement, they were unable to use the one pathway that could have viewed their complex situation with appropriate regard to their psychosocial disability. They expressed this view as follows:

“If I could have had access to Start Court I could have had this wrapped up already, but because I couldn’t it is often too hard for judges to be across the complicated events and intersections of my case.”

⁴ https://www.magistratescourt.wa.gov.au/S/start_court.aspx

3.2.4 Recommendation: Expand the Mental Health Court Diversion and Support Program to be able to accommodate more complex cases and relax the requirements to allow for mixed pleas.

3.3 Intersections of Accessibility with Police and Prisons

Police

The participants in our consultations were passionate about expressing their frustrations with the role that the police force had played in their engagement with the justice system. In relation to accessibility and full participation for people with psychosocial disability and mental health challenges, we heard that the behaviour and actions of police were the principal source of stigma experienced by our participants, and police conduct and attitudes influenced the proceeding engagement with courts and tribunals in a profoundly negative manner. For some of our members the stigmatising behaviour of police emerged as soon as they identified them as having been diagnosed with mental health challenges. One focus group participant spoke of being dehumanised and reduced to the possible manifestations of their diagnosis, that they have never experienced or been recorded to have experienced:

“I’m not delusional or have psychosis, and they treated me like I did.”

We heard about examples of misconduct from the police prior to court appearances, where wholly inappropriate steps were taken to coerce members to comply with police requests:

“I was told that if I would not interview the police that they would not give me my medication. This is not allowed, but if it is not on record then no one knows.”

Beyond these deeply concerning experiences, we also heard about how the police adopted an excessive approach to ensuring that some members were not able to return to the community after being charged:

“Police opposed my bail for a false charge that they immediately dropped afterwards... They did this to get the magistrate to deny bail and prove that I was a danger to the community. This charge was dropped afterwards, they just did it to keep me in prison. They don’t have to have anything to really back it up and the court just doesn’t care.”

Multiple members we consulted with felt that their mental health diagnoses were explicitly weaponised by the police in their court appearances to ensure that they were not provided with a fair process. In these cases, we heard about how the mental health challenges documented by participants formed the basis or context for charges that were then withdrawn after they had been used to preclude bail. These experiences

engendered a deep cynicism about the justice system broadly for members, and underscored the powerlessness that they felt in relation to having a fair process in courts.

This sense of powerlessness and frustration is perhaps best captured in the following view about the police offered by a member:

“...they can really say whatever they want. It just doesn’t have to be backed up.”

It is CoMHWA’s view that there needs to be extensive education to help enact a culture change within the WA police service, to ensure that the rampant stigma and associated poor conduct we heard about is addressed.

3.3.1 Recommendation: The WA Police Force should undertake extensive education about the nature of mental health challenges to curb stigmatising attitudes and behaviours towards consumers.

Prisons

For some of our members, their experiences of navigating prison revealed a concerning intersection of how this aspect of the justice system can complicate further access and full participation in other parts of the justice system such as courts and tribunals. The impact of prison for consumers cannot be understated, and it is important to note that, according to the Australian Institute of Health and Welfare, over half (51%) of Australia’s prison population have previously received a mental health diagnosis.⁵ The conditions in prison for people experiencing mental health challenges and navigating psychosocial disability accordingly represent a key concern for CoMHWA. In our consultation with members, we heard about the lack of support, treatment, and the sheer difficulty of getting by day-to-day in prison settings as a person with a psychosocial disability:

“For my first months in prison I was in crisis care... Even in times of crisis where I was suicidal they didn’t do anything, you just have to survive.”

Our members spoke of their experience of being held in these spaces, while simultaneously being unable to express their concerns or worries about the space and the impact it was having on them. The justice system was seen to suppress their voices about these experiences, as any negative account or complaint could be weaponised in their future court processes to ensure worse outcomes if they were to speak out. As one member explained to us:

⁵ <https://www.aihw.gov.au/reports/australias-health/health-of-people-in-prison>

“There is no place that you can raise these issues in court, because if you do, you are seen as ‘difficult’.. And it will look like I have no remorse – I take full responsibility and I have remorse for the things that I did. You can’t even talk about how hard prison is because the police will bring it up in court. I called my partner from prison crying, and had to express how difficult the space was – the police used this to oppose my bail application, saying that it showed that I was not remorseful about my actions... there is nowhere to talk about the difficulties of the space.”

In order to highlight genuine failings of the prison system, then, those in this space are forced to put themselves at greater risk of negative court outcomes by having their remorse questioned in processes such as bail applications. This systematic stifling of legitimate complaints and expressions of distress are not limited to consequences in the court system—we also heard about how life in prison would be impacted by trying to express these views:

“It is well known that if you complain in prison, the officers in the prison are going to make your life a lot worse.”

These experiences of prison reveal the profound impact that incarceration has for people with psychosocial disability and who are navigating mental health challenges. Our members also noted that, within prisons, the avenues to pursue treatment to help address mental health challenges is severely lacking and inadequate. This view was captured in the following response when a member was asked about how their mental health challenges were addressed when they were in prison:

“In prison there is no treatment for MH, only counselling.”

While the aforementioned issues with prisons and police may be outside of the present scope of reviewing the accessibility of the justice system for people with disabilities, CoMHWA feels that it is crucial to highlight the complex intersection of these aspects of the justice system which directly contribute to the challenges faced by consumers who are engaged within court processes.

3.3.2 Recommendation: Establish a genuinely confidential pathways and mechanisms to support people to make complaints and raise concerns when incarcerated in the prison system.

3.3.3 Recommendation: Ensure that prisons are able to provide appropriate mental health support and treatment.

3.4 Practical Accessibility and Full Participation in the Justice System

Sensory Issues and Practical Access in the Justice System

On our consultations, members spoke with us about some of the barriers they encountered in accessing courts and tribunals, as well as the processes related to these institutions. Overall, we heard that these spaces were physically accessible when attendance was required, however the courts in particular were broadly viewed as presenting barrier for engagement if a person has sensory access needs. One member that was interviewed spoke to us about this sensory impact in relation to their negative experience with accessing courts in the City of Perth:

“The courts in the city are so grim, it is like a hospital – Stressful and nearly no natural light to help alleviate your racing thoughts – Even a few paintings to distract would have given me something to help alleviate the atmosphere.”

Other members spoke of how they found waiting in court to be overwhelming, and the ambiguity they felt about whether they could take in sensory aids to cope in this space:

“Waiting your turn with so many people going to be seen... It is really sensory overload, you know that they will get to you but it is really stressful. Especially if you are triggered by harsh lights, noise, etc. You don’t even know if you can take in sensory activities... Would the judge get annoyed? You don’t know ahead of time.”

Some members felt that their psychosocial disabilities, as well as their neurodivergence and ‘hidden’ disabilities that are not immediately obvious, were not recognised or considered in relation to accessing courts and tribunals. One member felt that, despite signs overtly recognising these hidden challenges, the justice system failed to actually accommodate them in practice:

“I see a lot of sunflower symbols around in these places, but I have never had anyone reach out to check if I need help despite having the sunflower [symbol for invisible disability] prominently displayed... I just don’t feel like the people in the court recognise these kinds of hidden disabilities.”

3.4.1 Recommendation: Courts and Tribunals should ensure that they are suitable for those with sensory issues to navigate comfortably, and these adaptations to courts settings should be co-designed with people who experience sensory issues.

Navigating Neurodivergence and Stress in Court Processes

For some members, appearing in court can be an exceptionally stressful and sometimes complicated by the cooccurrence of neurodivergence. The pressure of giving testimony in court was cited as a key example of how neurodivergence can impact full participation in court processes, with one member noting that:

“It sometimes felt like I wasn’t really able to answer the question fully... You know the answers are going to be so important, and I can have a mental blank”

Given the seriousness of court processes and the gravity that outcome can have for those engaged in the justice system, members expressed that, even with prior preparation and current provisions for giving testimony, they still felt an inordinate amount of worry that posed a barrier to their full participation in proceedings:

“It can be very stressful to have to read and stick to a script/statement when you have ADHD, you feel like you might blank out and mess it up, and that can really matter in this space. I have memory issues and sometimes trouble recalling things precisely, it can be a super high-pressure environment to participate in.”

The impact of engaging in these stressful processes had a negative impact on the wellbeing of some of the members we consulted. In some cases, this led to an ongoing aversion of participating in the justice system in any capacity, and has led to a long-term distrust of how their concerns will be addressed in courts and related institutions. In the following example, the staff working at the court displayed callousness towards a person in deep distress when they were struggling to navigate their situation:

“Sometimes I don’t understand where I am, dissociate and pass out. The setting is so stressful, and when I was separated from my children and deeply upset, I was told by someone at the court ‘You need to stop crying now, or you are not going to be allowed to leave this room’. I was so traumatised and just couldn’t process what was happening to me.”

3.4.2 Recommendation: The court and tribunal system should take steps to ensure that the testimony of those with psychosocial disability and neurodivergence is afforded the appropriate time and conditions to ensure that their voices are heard to ensure full participation.

Accessibility of Forms and Document Processes for Courts and Tribunals

A concern that emerged from the members CoMHWA consulted with, as well as our Individual Advocates, was the lack of accessibility when navigating processes for providing documentation and filling out forms experienced by people with psychosocial disability. Our members expressed frustration with the terminological requirements for providing the court with forms required for a variety of processes, especially when they were not able to obtain legal assistance to undertake these tasks:

‘When you have to submit a form or document to get a hearing, there is a need to write it up in a particular way and use certain language... It’s not accessible at all if you don’t have a lawyer to help fill it out with you; legal aid just don’t have the time to sit down and fill it out with you. The forms are just so hard to navigate’

In addition to the difficulty of submitting court forms, our Individual Advocates have fielded repeated requests from consumers engaged with tribunals such as the State Administrative Tribunal (hereafter the SAT) for assistance in submitting required forms and uploading documents. Since 1st July 2023, to submit documents to the SAT, the “Ecourt” system must be used.⁶ We have heard that this system is extremely difficult to navigate for many people living with a psychosocial disability. As it presently stands, many of the format-specific links to provide documentation on the SAT webpage are simply broken and do not function. CoMHWA’s advocates have communicated these issues to the SAT, who recommended an *ad hoc* solution of using the ‘Have your say’ section to upload documents. It is CoMHWA’s view that these processes should be clear, accessible, and utilise fully functioning digital platforms alongside alternative methods of submission to maximise accessibility for people living with psychosocial disability.

⁶ [https://sat.justice.wa.gov.au/files/Guide for Self-Represented Persons.pdf](https://sat.justice.wa.gov.au/files/Guide%20for%20Self-Represented%20Persons.pdf)

3.4.3 Recommendation: Ensure that there is appropriate support available to assist those with psychosocial disability to be able to effectively fill out court forms and documentation.

3.4.4 Recommendation: Ensure online document submission portals are functional, and provide alternative modes of submission to support accessibility.

3.5 The Need for Increased Advocacy

In our consultation with members, there were repeated discussions about how important it was to be able to access advocacy to help understand and navigate the justice system. The need for advocates to help people with psychosocial disability was the strongest commonality of the views communicated to us by our members in consultation. As one focus group participant stated:

“It really matters what knowledge that you have, and the kinds of questions that you ask. People should have the right to get some advocacy or guidance about how to move through the system.”

The need for advocacy was echoed by members who considered themselves extremely capable and experienced with navigating complex institutions:

“The court process has been quite hard, I am intelligent and capable, but even so it has been difficult to understand.”

The experiences CoMHWa heard about when members did not have access to advocacy underscored a confusion and distress that came from a lack of knowing what was happening procedurally, and what would likely happen next. The following story expands on the impact experienced by a focus group participant when they were incarcerated and unaware of the system:

“I was arrested ...held in the watchhouse without any of my personal effects, food or medication, ... I was taken to Magistrates court, locked up with 15 others, I was the last person to be seen, had to go into a glass box... being leered at by men who can see you... I had no idea what was happening and thought that I would be going home. I was told I was going to be going to prison, because it was a Friday and the magistrate didn’t have time to see me ... I was so distressed. ... I didn’t know I was going to go to prison, I didn’t know what the process was, any of it. I had no idea, couldn’t call my partner until Friday night.”

The distress caused by having to navigate in a complicated system blindly in this instance could have been ameliorated if there was proactive advocacy in place to help support them in this process. Beyond the benefits that advocates can bring in explaining processes to those who find themselves engaged with the justice system unexpectedly, advocates can also support people with psychosocial disability from being subjected to unreasonable or excessive prosecution. The following experience highlights this potential, where legal advocacy from the Mental Health Law Centre helped this member to defend themselves from the police trying to bring additional charges and unwarranted prosecution (an issue we expand on above in section 3.3):

“I had help from the Mental Health Law Centre, and the police tried to bring in additional evidence that was dubious...though I was charged, the outcome was nowhere near as bad as it could have been if I didn’t get support.”

While there are multiple kinds of advocacy available presently for those engaged in the justice system, our members spoke of the need for more resourcing of these important roles to ensure that there are enough advocates available to offer support. Further resourcing would also ensure that advocates have the time to support people appropriately in the complex and intersectional circumstances that people with psychosocial disability frequently experience. Without sufficiently resourced and accessible advocacy, consumers are forced to rely on their own abilities and capacity to learn, in order to come to grips with a deeply alienating and intimidating justice system. As one member put it when reflecting on their experience of self-advocacy:

“Some of the best guidance that I received was from a peer who told me to become my own advocate... I felt empowered and I was able to look into these processes and speak for myself. I’ve had to learn how to research this myself, thank God I know how to read and write... There are some people that wouldn’t be able to do this.”

For those living with mental health challenges and psychosocial disability, engagement with the justice system is often experienced during times of crisis and profound distress. Without the appropriate advocacy in place, and the proactive offering of this support, this vulnerable cohort will continue to fall through the cracks in the system and experience worse court outcomes than others in the community.

3.5.1 Recommendation: Increase resourcing for institutions that provide advocacy on behalf of people with psychosocial disability in the justice system.

3.6 Case Study: The Importance of Building Awareness of Existing Accessibility Requirements

Some of the concerns raised by our members in consultation and expanded on in previous sections are already identified in the Justice Departments *Disability Access and Inclusion Plan 2024-2029*, however the adoption and awareness of this important document appears to vary significantly within the justice system. On the next page, we present a case study below drawn from one of our members, where they raised access considerations with the Family Court of Western Australia only to have their concerns dismissed. In light of this example, CoMHWA believes it is crucial for current and future reforms to ensure that changes to improve the accessibility of the justice system for people with disability are communicated effectively with all parts of the justice system.

3.6.1 Recommendation: The justice system should undertake thorough internal training and education when new measures to improve accessibility come into place.

Case Study: Access to Family Court of Western Australia

Western Australia is the only Australian state with a standalone, state-based family court. Jane has been involved in family court proceedings since the end of her relationship with her children's father. Jane has intersecting psychosocial, neurodivergence, and developmental disability. Jane is also impacted by trauma due to the relationship. Jane is a highly intelligent and capable woman. However, her disabilities significantly impact her ability to process written information, organise/summarise information and concentrate for long periods of time.

Jane has attempted to make the courts aware of the barriers that she is experiencing engaging in the court processes. These barriers have now become more significant as Jane is no longer able to afford the private lawyer who has the communication skills to represent her fully, and is now self-represented. During her attempts to have suitable accommodations so she could participate, she wrote, with the help of a support worker, a letter asking for accommodations under the Department of Justice disability inclusion plan, which she had assumed applied to all Western Australian Courts.

The response from the Principal Registrar included, "Noting your complaint that you have faced discrimination based on your disability, I have taken the opportunity to peruse your file. Further noting that you have been represented by lawyers substantially during the whole of the proceedings, it does not appear that any formal application was ever made by you or on your behalf for any specific "accommodations" due to your stated disability." Despite seeking legal advice from both community legal services and private lawyers on several occasions, Jane has never been advised on what orders could be sought in this area. There is no information online or in the self-represented person handbook about orders concerning accommodations.

Further, Jane had explained in her letter that the forms, drafting orders and other communications with the court were creating a barrier to her participation. In response the Principal Registrar responded, "I refer to your reference to the Court's forms. I do not accept that the documents are "complex", in particular the Form 2 Application in a Case and supporting affidavit required when interim or interlocutory orders are sought. I note you state that "the FCWA is actively breaching its own statutory Disability Access and Inclusion Plan". I am unaware of such a plan and therefore cannot comment on your allegation."

4. Conclusion

In our preliminary submission CoMHWa has sought to focus on the voices of our members who have been impacted by their inability to fully and appropriately engage with the justice system in WA. We look forward to providing further input to this important undertaking by the Law Reform Commission of WA in the future, where we intend to once again elevate the voices of our members alongside providing more detailed proposals for how our state could support people with psychosocial disability to engage fully with the justice system.

The impact that the justice system can have on the lives of consumers cannot be understated, and the lack of appropriate and equitable processes can negatively transform the entire trajectory of a person's life. This profound impact is captured in the following reflection from a CoMHWa member who participated in our focus group:

*"I was finishing my degree, I was about to try to have a baby, everything was on track and going well...and medication was helping I don't know now if I will ever be able to get a job again... In prison they put you on so much medication that I feel like my brain is fried and I won't be able to go back to study...I can't afford my rent, I am going to have to divorce my partner just so I can get DSP to survive.... It's just going to get worse... I only have three years left to have children according to my and we can't afford IVF. If I was approved bail the first time, I could have stayed at work, **all of this would have been different.**"*

We hope that our preliminary submission provides some guidance to the Law Reform Commission of WA in their task of approaching their review, and that the experiences our members bravely and generously shared with us can be, either wholly or in part, addressed through the eventual reforms that may come from this process. CoMHWa is hopeful that this process can help to bring about much needed change within our justice system, and improve the outcomes for people living with psychosocial disability and mental health challenges throughout the state.



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